IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 277 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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Versus

COMMISSIONER OF INCOME TAX

Appearance:
MRS. HANSA PUNANI, Advocate for the petitioner.
MR MIHIR THAKORE & MR MIHIR JOSHI
with MR MANISH R BHATT,
Advocates for the Respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 11/03/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad, has referred the following two questions for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961; the bracketed portion i.e [/40(c)] having been inserted by us for reframing it.

For Assessment Year 1980-81:

1. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that cash reimbursement of medical expenses to the managing director is a perquisite and therefore, is to be considered for the purpose of disallowance under Section 40A(5)[/40(c)] in the hands of the company and further in holding that the claim was premature?"

For Assessment Year 1981-82:

2. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that cash reimbursement of medical expenses to the managing director is a perquisite and therefore, is to be considered for the purpose of disallowance under Section 40A(5)[/40(c)] in the hands of the company?"

2. In the appellate order, the Tribunal had in this context observed "the next ground is in respect of an expenditure of Rs. 1,20,274/- in respect of medical treatment of the managing director, not required to be considered for allowance under Section 40A(5)/40(c) of the Act." In the body of the order there is also a reference to the contention regarding the applicability of the provisions of Section 40(c) of the Act. Therefore, while referring the aforesaid two questions while mentioning Section 40A(5), the Tribunal has, as it appears, through over-sight not mentioned Section 40(c) in respect of which also these questions arise from its order. We have therefore, reframed the questions by adding "/40(c)" in both the above questions.

In the return of income filed by the assessee for the Assessment Year 1980-81, the assessee company had claimed medical expenditure incurred for a sum of Rs. 1,47,527/- for the medical treatment of the Chairman and Managing Director. According to the assessee, it's

Chairman and Managing Director had undergone medical treatment abroad in respect of which the company incurred the said expenditure. The payment of this amount was approved in the General Body Meeting and since the Government's approval sanctioning the expenditure was not obtained in that year, the assessee had treated this expenditure as an advance to the managing director. The Government approval was later obtained on 8.1.1981 and the amount actually reimbursed to the managing director as per the Government Order was Rs. 1,20,274/-. According to the assessee, the said amount was the expenditure incurred in the interest of the company and ought to have been allowed in the Assessment Year 1980-81 for the previous year 1979-80, during which the payment was approved by the General Body Meeting of the Company. The ITO, by his order dated 11th August, 1983, negatived the assessee's contention on this count by holding that the claim was premature and would be considered in the year in which the payment was authorised by the Central Government. It was held that any payment which was subject to the approval by the Central Government would be eligible for deduction only on the date on which the Government had approved the payment. Thereafter, the claim was again made in the Assessment Year 1981-82, and the Income Tax Officer by his order dated 30th July, 1984, held that the amount of Rs.1,20,274/- being the expenditure for medical treatment incurred by the company and as approved by the Government under Section 310 of the Companies Act, was a `perquisite' and the same was required to be considered while making disallowance under Section 40A(5) of the said Act.

The CIT (Appeals) in respect of the Assessment Year 1980-81, by his order dated 22nd August, 1985, noticing that neither the expenditure was actually incurred in the relevant accounting year nor was the approval of the Government obtained for the payment in the relevant Accounting Year, up-held the order of the ITO, treating the claim for deduction as premature. In the other appeal which was in respect of Assessment Year 1981-82 and which was also decided on the same day i.e. 22nd August, 1985, the CIT (Appeals) held that these expenses which were medical benefits given to the managing director, were covered by the provisions of Section 40A(5)(a)(ii) of the Act. It was held that as per the definition of "salary" as given in Section 17(1), read with the definition of "perquisite" given in Section 17(2)(iv), medical benefits given to the employee would be a sum paid by the employer in respect of an obligation which, but for such payment would have been payable by the employee and that such payment was covered under the

provisions of Section 40A(5) and therefore, the ITO was justified in treating the medical benefits as perquisite.

2. The assessee filed two appeals in respect of Assessment Years 1980-81 and 1981-82 against the orders of the CIT (Appeals) before the Tribunal. It was contended before the Tribunal by the assessee that the said expenditure in respect of medical treatment of the managing director was not required to be considered for disallowance under Section 40A(5) or 40(c) of the Act. It was contended that since the amount was paid in cash, it was outside the term "perquisite". The Tribunal following the decision of Special Bench of ITAT in the case of Glaxo Laboratories to the effect that the provisions contained in Section 40A(5) of the Act were applicable and cash reimbursement of the medical expenses was required to be considered while resorting to disallowance in excess of ceiling limit prescribed and that even considering the language contained in Section 40(c) of the Act the issue was favourable to the Revenue, confirmed the order passed by the Commissioner (Appeals). As regards the year in which the disallowance was required to be made, the Tribunal found no justification to interfere with the decision taken by the CIT (Appeals).

3. The provisions of Sections 40(c) and 40A(5) as applicable during the relevant Assessment Year, read as under:-

"Amounts not deductible.

"40. Notwithstanding anything to the contrary in Sections 30 to 39, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",--

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(c) in the case of any company--

(i) any expenditure which results directly or indirectly in the provision of any remuneration or benefit or amenity to a Director or to a person who has a substantial interest in the company or to a relative of the Director or of such person, as may be,

(ii) any expenditure or allowance in respect

of any assets of the company used by any person referred to in sub-clause (i) either wholly or partly for his own purposes or benefit,

if in the opinion of the Income Tax Officer any such expenditure or allowance as is mentioned in sub-clauses (i) and (ii) is excessive or unreasonable having regard to the legitimate business needs of the company and the benefit derived by or accruing to it therefrom, [so, however, that the deduction in respect of the aggregate of such expenditure and allowance in respect of any one person referred to in sub-clause (i) shall, in no case, exceed--

(A) where such expenditure or allowance relates to a period exceeding eleven months comprised in the previous year, the amount of seventy-two thousand rupees;

(B) where such expenditure or allowance relates to a period not exceeding eleven months comprised in the previous year, an amount calculated at the rate of six thousand rupees for each month or part thereof comprised in that period:

Provided that in a case where such person is also an employee of the company for any period comprised in the previous year, expenditure of the nature referred to in clauses (i), (ii) (iii) and (iv) of the second proviso to clause (a) of sub-section (5) of Section 40A shall not be taken into account for the purposes of sub-clause (A), or sub-clause (B), as the case be.]

Explanation: The provisions of this clause shall apply notwithstanding that any amount not to be allowed under this clause is included in the total income of any person referred to in sub-clause (i);

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"Expenses or payments not deductible in certain circumstances:

"40A. (1) The provisions of this Section shall have effect notwithstanding anything to the

contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession".

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(5)(a) Where the assessee --

(i) incurs any expenditure which results directly or indirectly in the payment of any salary to an employee or a former employee, or

(ii) incurs any expenditure which results directly or indirectly in the provision of any perquisite (whether convertible into money or not) to an employee or incurs directly or indirectly any expenditure or is entitled to any allowance in respect of any assets of the assessee used by an employee either wholly or partly for his own purposes or benefit,

then, subject to the provisions of clause (b), so much of such expenditure or allowance as is in excess of the limit specified in respect thereof in clause (c) shall not be allowed as a deduction:

Provided that where the assessee is a company, so much of the aggregate of --

(a) the expenditure and allowance referred to in sub-clauses (i) and (ii) of this clause; and

(b) the expenditure and allowance referred to in sub-clauses (i) and (ii) of clause (c) of Section 40,

in respect of an employee or a former employee, being a director or a person who has a substantial interest in the company or a relative of the director or of such person, as is in excess of the sum of seventy-two thousand rupees, shall in no case be allowed as a deduction:

Provided further that in computing the expenditure referred to in sub-clause (i) or the expenditure or

allowance referred to in sub-clause (ii) of this clause or the aggregate referred to in the foregoing proviso, the following shall not be taken into account, namely:--

(i) the value of any travel concession or assistance referred to in clause (5) of section 10;

(ii) passage moneys of the value of any free or concessional passage referred to in sub-clause (i) of clause (6) of Section 10;

(iii) any payment referred to in clause (iv) of clause (v) of sub-section (1) of Section 36;

(iv) any expenditure referred to in clause (ix) of sub-section (i) of Section 36.

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Explanation 2: in this sub-section,--

(a) "salary" has the meaning assigned to it in clause (1) read with clause (3) of Section 17 subject to the following modifications, namely:--

(1) in the said clause (1), the word "perquisites" occurring in sub-clause (iv) and the whole of sub-clause (vii) shall be omitted;

(2) in the said clause (3), the references to "assessee" shall be construed as references to "employee or former employee" and the references to "his employer or former employer" and "an employer or a former employer" shall be construed as references to "the assessee";

(b) "perquisite" means --

(i) rent free accommodation provided to the employee by the assessee;

(ii) any concession in the matter of rent respecting any accommodation provided to the employee by the

assessee;

(iii) any benefit or amenity granted or provided free of cost or at concessional rate to the employee by the assessee;

(iv) payment by the assessee of any sum in respect of any obligation which, but for such payment, would have been payable by the employee; and

(v) payment by the assessee of any sum, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund, to effect an assurance on the life of the employee or to effect a contract for an annuity."

4. As can be seen from the provision of Section 40, it indicates as to what amounts will not be deductible notwithstanding anything to the contrary contained in Sections 30 to 39 which provided for deductions on various counts which could be made while computing the income referred to in Section 28 under the head "Profits and gains of business or profession". Clause (c) of Section 40 is a special provision made in respect of expenditure incurred by a company, which results directly or indirectly in the provision of any remuneration or benefit or amenity to a director or to a person who has a substantial interest in the company or a relative of such director or a person. If such expenditure is excessive or unreasonable, then it will not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". Even if it is not excessive or unreasonable, it can in no case exceed the ceiling of 72,000 rupees for availing of the deduction.

5. Section 40A (5)(a) was inserted with effect from 1.4.1972 and it dealt with any expenditure incurred by an assessee in the payment of any salary to an employee or in the provision of any perquisite (whether convertible into money or not) to an employee and provided a limit in clause (c) beyond which such expenditure or allowance was not to be allowed as a deduction. The first proviso to Section 40A is a special provision applicable where the assessee is a company. It requires the expenditure and

allowance referred to in sub-clauses (i) and (ii) of Clause (A) of sub-section (5) of Section 40A and the expenditure and allowance referred to in sub-clauses (i) and (ii) of Clause (c) of Section 40 to be clubbed together and provides a ceiling of Rs. 72,000/- beyond which in no case any deduction can be allowed for such expenditure and allowance to a company. This proviso will operate in respect of an employee who is also a director of the company. The total of the expenditure and allowance paid to such person in his capacity as a director will have to be worked out under sub-clauses (i) and (ii) of Clause (c) of Section 40 and the expenditure and allowance referred to sub-clauses (i) and (ii) of Section 40A(5) (a) paid to such person in his capacity as an employee will also have to be worked out and these are required to be aggregated up for the purpose of working out disallowance beyond the ceiling of seventy two thousand rupees. Where same person is in dual role, that of an employee and a director of the assessee company, then the ceiling of Rs. 72,000 provided in the first proviso to Section 40A(5)(a) will apply to the aggregate amount because this proviso will prevail over the other provisions of the Act, in view of the non-obstante clause contained in Section 40A(1) namely that the provisions of this Section shall have the effect notwithstanding anything to the contrary contained in any other provision of this Act.

6. While working out the expenditure and allowance under clauses (i) and (ii) of Section 40(c), any expenditure resulting in direct or indirect provision of any remuneration or benefit or amenity to a director is required to be taken into account. The word "remuneration" in context of remuneration to a director of a company is a known concept. In Section 309 of the Companies Act, 1956, there is a provision for remuneration of the directors and it is provided that the remuneration payable to the directors of a company, including any Managing or whole-time director, shall be determined in accordance with and subject to the provisions of Sections 198 and 309, either by the Articles of the Company or by a resolution or if the Articles so required, by special resolution, passed by the company in General Body Meeting and the remuneration payable to any such director so determined, shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity, provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if the services rendered are of a professional nature, and in the opinion of the Central Government, the

director possesses requisite qualifications for the practice of the profession. Under sub-section (3) of Section 309, it is provided that the remuneration shall not exceed 5% of the net profits to a director who is either in the whole-time employment of the company or a managing director and if there are more than one such director, it shall not exceed ten per cent of the net profits for all of them together. Under Section 198(1) of the Companies Act, it is provided that the total managerial remuneration payable by a company to it's directors and it's manager in respect of any financial year shall not exceed eleven per cent of the net profits of the company for the financial year computed in the manner laid down in Sections 349, 350 and 351, except that the remuneration of the directors shall not be deducted from the gross profits. In the explanation to Section 198 of the Companies Act, it is provided that for the purposes of Section 198 and Sections 309, 310, 311, 381 and 387, "remuneration" shall include,--

(a) any expenditure incurred by the company in providing any rent free accommodation or any other benefit or amenity in respect of accommodation free of charge, to any of the persons specified in sub-section (1);

(b) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the persons aforesaid;

(c) any expenditure incurred by the company in respect of any obligation or service which but for such expenditure by the company, would have been incurred by any of the persons aforesaid; and

(d) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for, any of the persons aforesaid or his spouse or child.

7. Thus, when Section 40(c)(i) of the said Act referred to expenditure incurred on remuneration or benefit or amenity to a director, all expenditure incurred in respect of such director as understood of remuneration, would obviously fall under this clause. The expenditure on remuneration or benefit or amenity given to a person who is both a director and an employee

of the company in his capacity as a director, will fall under Clause 40(c) independently of the expenditure on any salary or perquisite, which may be given to him in the other capacity as an employee of the company, which would fall under Section 40A(5)(a) of the said Act. Even in case of a managing director, the remuneration or benefit or amenity given to him in his capacity as a managing director would fall under Section 40(c). The nature of remuneration paid to a managing director and a director, is entirely different from a salary payable to an employee, the foremost distinction being, the connection of remuneration of such directors with the percentage of profits of the company, which would imply that if no profits are there, no such remuneration can be paid to the directors including a managing director.

8. Under Section 2(26) of the Companies Act, a managing director means, a director who by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by it's Board of Directors or by virtue of it's memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called. It would appear from the provisions relating to directors and managing directors, who is also a director, in Chapter II of the Companies Act, that the directors have a special position in the company and they are not in their capacity as directors, employees of the company. However, the fact that a person is a managing director or a director of a company and therefore, in management and control of the company, will not debar him to have a separate relationship with the company as its employee under a contract of service. Thus, a director who has also taken an employment in the company would be functioning in dual capacities - namely one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company i.e. under a contract of service entered into with the company. Merely from the fact that a managing director gets a remuneration as envisaged under the Companies Act, it cannot be inferred that he is a servant of the company. The test to determine whether a managing or an ordinary director is also an employee, is whether he is under a contract of service. Where there is contract of service and relationship of employer employee between the company and the director is established, there would be control over his work as an employee of the company and that capacity would be different from his other role as a director of the company. Therefore, a

director including a managing director who is not an employee under any contract of service with the company, would not be an employee of the company merely by virtue of his having been paid remuneration or benefits or amenities in his capacity as such director of the company. A person is a managing director or a director of the company not by virtue of any contract of service with that company but as per the provisions relating to "Directors contained in Chuapter II of the Companies Act. It would therefore follow that the remuneration, benefits and the amenities that are given to a director including a managing director of the company, would be independent and separate from any salary etc. given to such director in his capacity as an employee. In respect of the employees of the company, the Board of Directors in its report under Section 217 of the Companies Act, is required to include a statement showing the name of every employee of the company as provided by sub-section (2)(a) thereof. It appears that in reply to a query, the Department had expressed its view that a managing director is not an employee within the meaning of sub-section (2)(a) of Section 217 of the Companies Act and this is mentioned at page 1449 in Commentary under Section 217 in A. Ramaiya Guide to Companies Act (Thirteenth Edition), 1994. However, when by virtue of contract of service with the company a managing director or other director is employed by the company, then in that capacity he would be getting separate emoluments as per the terms of employment, the expenditure in respect of which, of course, would not be covered by clauses (i) and (ii) of Section 40(c) but would fall under Section 40A(5)(i) and (ii) of the Act.

9. It would appear from what we have said above that whatever expenditure is incurred by the company in respect of a managing director or other director by way of remuneration or benefit or amenity that would be covered under Section 40(c) and whatever expenditure by way of salary or perquisites is incurred by it in respect of the person, having a dual role of director and employee, in his capacity as an employee, that expenditure will be computed under clauses (i) and (ii) of Section 40A (5)(a) of the said Act. There will thus, be no overlapping between the expenditure incurred by a company over a director which falls in clauses (i) and (ii) of Section 40(c) and the expenditure incurred by the company of the nature falling in clauses (i) and (ii) of Section 40A (5)(a), which would be relatable only to his capacity as an employee where the director is also an employee. These two types of expenditures - namely, one incurred by the company in respect of the director who is

also its employee, in his capacity as a director and the other incurred in his capacity as an employee, will thus be worked out independently, and, in view of the proviso to sub-section (5)(a) of Section 40A, they will have to be aggregated them and any expenditure in excess of the ceiling of Rs. 72,000/- provided in that proviso will not be allowed to be deducted. That is how the provisions of Section 40(c) and Section 40A(5)(a) read with its first proviso, are in our view, intended to operate.

10. In the case before us, an amount of Rs. 1,20,274/- was sanctioned by the Central Government under Section 310 of the Companies Act, as is clear from the undisputed record. Under Section 310 of the Companies Act, any increase in the remuneration of any director including a managing or whole-time director, is required to be approved by the Central Government. It was provided prior to the amendment of 15.6.1988 that such increase in remuneration shall not have any effect unless approved by the Central Government. As noted above, the word remuneration is defined in Section 198 of the Companies Act and it includes any expenditure incurred by the company in providing any other benefit or amenity free of charge or at concessional rate or any expenditure incurred in respect of any obligation or service which, but for such expenditure by the company, would have been incurred by any of the persons specified in sub-section (1) of Section 198 i.e. directors and manager of the Company. This is why when expenditure incurred by the managing director on his medical treatment was to be paid by the company, the matter was sent for approval to the Central Government under Section 310, which approval came to be given only on 8.1.1981. Therefore, the resolution of the General Body for bearing such expenditure did not have any effect until it got the approval of the Central Government on 8.1.1981. It is therefore clear that the claim in this regard was premature when it was earlier made in the Assessment Year 1980-81, which covered the previous year of 1979-80. In our view therefore, the Tribunal was right in holding that for the Assessment Year 1980-81, the claim for deduction of the expenditure incurred by the assessee for reimbursement of medical expenses to the managing director was premature.

11. It is clear from the approval that was sought under Section 310 of the Companies Act from the Government that the expenditure in question related to the managing director in his capacity as a director and not an employee of the company. Thus, the expenditure was required to be computed under Section 40(c)(i) of the

Act. The said clause takes within its sweep any expenditure on remuneration or benefit or amenity to a director and the word "remuneration" would therefore, obviously include direct cash payments to the director. Therefore, expenditure incurred on cash reimbursement of medical expenses to the managing director would fall within sub-clause (i) of clause (c) of Section 40 and not under Section 40A(5)(a) under which only expenditure incurred on a person in his capacity of an employee could be computed where such employee is also a director. We are fortified in this view by the decision of this Court in Gujarat Steel Tubes Limited Vs. CIT, reported in 210 ITR 358, in which it was held that the phrase "any remuneration or benefit or amenity" in Section 40(c)(i) is of wide amplitude and it covers benefit or amenity in cash or in kind. It was held in that decision that in view of the clear language of sub-clause (i), cash medical reimbursement would be covered under sub-clause (i) of Clause 40(c) and that reimbursement of medical expenses incurred by the directors was a benefit to director within the meaning thereof. This decision was followed in CIT Vs. Synpol Products Pvt.Ltd., reported in 217 ITR 154, in which it was held that reimbursement of medical expenses incurred by the directors is a benefit to a director within the meaning of Section 40(c)(i) of the Act. Similar view was also taken in CIT Vs. Raipur Manufacturing Co. Ltd., reported in 132 CTR p.63, in which this Court held that reimbursement of medical expenditure in cash to managing director was covered by Section 40(c), following Gujarat Steel Tubes Ltd. (supra).

12. In view of the clear legal position on construction of the provisions of Section 40(c) that cash reimbursement of medical expenses to the Director would fall in Section 40(c)(i) of the Act, the decision of the Supreme Court in CIT Vs. Mafatlal Gangabhai & Co. Pvt.Ltd., reported in 219 ITR 644, which was rendered in context of payments made to the employees of the company under Section 40A(5)(a)(ii) would not be applicable to the present case. In that matter, the question was as to whether payments made in cash by an assessee company to its employees were within the mischief of Section 40(a)(v), (prior to amendment) and Section 40A(5) of the Act. Section 40A(a)(v) as it originally stood, related to expenditure made by the assessee which resulted in the provision of any benefit or amenity or perquisite whether convertible into money or not, to an employee. That sub-clause (v) of Section 40(a) was omitted in 1971 when sub-section (5) was simultaneously introduced in Section 40A and under clause (a) of sub-section (5) of Section

40A, expenditure in payment of salary was separately dealt with in sub-clause (i) while expenditure which resulted directly or indirectly in the provision of any perquisite whether convertible in to money or not, was placed in sub-clause (ii). The Supreme Court held that the language employed in the sub-clause was not capable of taking within its ambit cash payments made to the employees by the assessee. It was observed that these cash payments will be treated as salary paid to the employees, but they cannot be brought within the purview of the words "any expenditure" which results directly or indirectly in the provision of any amenity, benefit or perquisite - more so because of the following words "whether convertible in to money or not". It was held that the position was not different even after the enactment of Section 40A(5)(a)(ii), which, except for certain structural changes, was similar in all material aspects to the earlier Section 40(a)(v) of the Act. It will be noted that these words "whether convertible in to money or not" are conspicuously absent in Section 40(c)(i) and the clause speaks of any expenditure which results in the provision of any remuneration or benefit or amenity to a director. A provision for remuneration to a director would obviously include any cash payment to the director by way of remuneration and so will the word "benefit" include any such monetary benefit in absence of the words "whether convertible in to money or not" which made the difference in construing the provisions of Section 40A(5)(a)(ii) in Mafatlal Gangabhai's case (supra). Therefore, Mafatlal Gangabhai's case cannot come to the rescue of the assessee.

13. In view of what we have said above, we hold that the Tribunal was right in holding that the assessee's claim was premature in respect of the Assessment Year 1980-81. The question No.1 is therefore, answered in the affirmative to the extent that the Tribunal has rightly held that the claim was premature in the Assessment Year 1980-81 and therefore, the other part of that question in that year would not arise for an answer. We also hold that the cash reimbursement of medical expenses to the managing director was covered by the provisions of Section 40(c)(i) of the said Act and not under Section 40A(5) thereof for computing it for the purpose of disallowance in the hands of the company.

The question No.2 is answered accordingly in the affirmative in favour of the Revenue and against the assessee. The reference stands disposed of with no order as to costs.

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*/Mohandas